

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**THOMAS K DALTON**  
Claimant

**APPEAL NO: 06A-UI-08278-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**C & K HTG AIR COND & PLBG INC**  
Employer

**OC: 07/16/06 R: 02**  
**Claimant: Appellant (2)**

Section 96.5(1) – Voluntary Quit  
Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Thomas Dalton filed a timely appeal from the August 9, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 31, 2006. Mr. Dalton participated. Owner Steven Stephan represented the employer and presented additional testimony from General Manager Chuck Hazelhoff. Claimant's Exhibits A through E and Employer's Exhibits One through Five were received into evidence. Both parties waived formal notice on the issue of whether the claimant has been able and available for work since establishing his claim for benefits.

**ISSUE:**

Whether Mr. Dalton voluntarily quit for good cause attributable to the employer when he quit in response to the employer deducting funds from his paycheck to employer's loss on uncollectible account receivable. The administrative law judge concludes the quit was based on good cause attributable to the employer.

Whether Mr. Dalton has been available for employment referrals since establishing his claim for benefits. The administrative law judge concludes Mr. Dalton's new full-time employment made him unavailable for employment referrals.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Dalton was employed by C & K Heating, Air Conditioning and Plumbing from May 14, 1996 until July 20, 2006, when he quit. On July 17, Mr. Dalton's wife picked up his weekly paycheck. At the time, Mr. Dalton was in Arizona participating in military training. Enclosed with Mr. Dalton's paycheck was the copy of an invoice for a plumbing service call in April. Though the employer's policy was to have service technicians collect payment from the customer at the time the service is performed, Mr. Dalton had neglected to do so in connection with the service call in question. The customer had subsequently refused to pay for the service. Aside from failing to collect from the customer at the time of the service call, Mr. Dalton had done nothing else wrong in

connection with the service call. Because the customer had refused to pay the \$206.00 invoice and because the employer had previously counseled Mr. Dalton on the need to collect payment at the time services were rendered, owner Steve Stephan had decided to deduct the amount of the invoice from Mr. Dalton's paycheck. The employer had written the following on the invoice that was included with Mr. Dalton's paycheck: "Bill not collected at time of service—customer refuses to pay. We [sic] be taken out of check in 4 pmts." The employer had deducted \$50.00 from Mr. Dalton's weekly paycheck.

Mr. Dalton returned to Iowa on July 18. At that time, Mr. Dalton contacted Iowa Workforce Development to file a formal complaint about the deduction from his check. On July 20, Mr. Dalton spoke to his immediate supervisor, General Manager Chuck Hazelhoff, about returning to work and asked about the \$50.00 deducted from his check. Mr. Hazelhoff told Mr. Dalton that he did not know anything about it and that Mr. Dalton should speak with the owner. Mr. Dalton indicated that he was quitting the employment based on the unauthorized deduction. Mr. Hazelhoff made arrangements with Mr. Dalton to come in on July 21 to execute paperwork to document the separation from employment. Mr. Dalton appeared for the meeting. At the time of the meeting on July 21, the employer issued a check to Mr. Dalton to cover the \$100.00 total that had been deducted from two weekly paychecks.

Though Mr. Dalton's primary reason for quitting the employment was the deduction taken from his paychecks, Mr. Dalton's quit was also based on his perception that the employer was hassling him about his military obligation and/or training. On June 17, Mr. Dalton learned that he needed to travel to Arizona on July 7 to participate in aircraft maintenance training. At the time, Mr. Dalton anticipated being able to return to Iowa on August 3. On June 19, Mr. Dalton notified the employer that he needed to be absent July 7-August 3. The employer was not happy about what it perceived to be short notice for an extended absence. Though the employer indicated its displeasure, it approved the absence.

Immediately after Mr. Dalton left the employment with C & K, he commenced new full-time employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Dalton's voluntary quit was for good cause attributable to the employer. It does.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

The evidence indicates that Mr. Dalton quit the employment in direct response to the employer's act of deducting money from Mr. Dalton's paychecks to cover the loss associated with an account receivable upon which the employer could not collect. Though Mr. Dalton may have been negligent in failing to secure payment at the time the service was rendered, this did not justify withholding money from his paycheck. The employer acknowledged its unreasonableness in deducting the money when it reimbursed Mr. Dalton upon his quit. A reasonable person in Mr. Dalton's circumstances would have found the paycheck deduction intolerable and may very well have quit the employment. Mr. Dalton's quit was for good cause attributable to the employer. Accordingly, Mr. Dalton would be eligible for benefits, provided he was otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence in the record indicates that Mr. Dalton commenced new employment immediately upon quitting the employment with C & K. Accordingly, Mr. Dalton has not been available for work referrals since establishing his claim for benefits and, accordingly, would not be eligible for benefits.

**DECISION:**

The Agency representative's August 9, 2006, reference 02, decision is reversed. The claimant voluntarily quit the employment for good cause attributable to the employer. The claimant would be eligible for benefits, provided he was otherwise eligible. However, the claimant has not been available for work referrals since establishing his claim for benefits and, therefore, is not eligible for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs